

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JAMES MOORE,

Petitioner,

v.

Civil Action No. 5:19CV180
(STAMP)

F. ENTZEL,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE AS FRAMED
AND DISMISSING CIVIL ACTION WITHOUT PREJUDICE

I. Background

The pro se¹ petitioner, James Moore, is currently incarcerated at USP Hazelton where he is serving a sentence imposed by the Superior Court for the District of Columbia. ECF No. 1 at 1-2. The petitioner filed a Petition for Habeas Corpus Under 28 U.S.C. § 2241, in which he first alleges that “[o]n June 26, 2001, in the Superior Court of the District of Columbia Docket No. F-6420-00 indictment filed, count(s) C-F there is no record of grand jury minutes.” Id. at 5. In support of this ground, the petitioner states that “[i]f the indictment was filed June 26, 2001 why petitioner did not get a copy of it.” Id. Second, the petitioner alleges that “[o]n June 26, 2001 Petitioner was not present in Court nor did Petitioner receive the grand jury minutes in case.

¹“Pro se” describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

[N]or did Petitioner Court appointed attorney ask in open court or period the grand jury minutes before trial." Id. at 6. Third, the petitioner alleges that "[o]n May 19, 2016, Petitioner request number; FOIA - 2016-02692 date of receipt May 19, 2016 subject of request." Id. However, the petitioner alleges that "[a] search for records in the United States Attorney's Office for the District of Columbia has revealed no responsive records regarding the above subject." Id. Specifically, the petitioner seeks "instant release." Id. at 8.

This civil action was referred to United States Magistrate Judge James P. Mazzone under Local Rule of Prisoner Litigation Procedure 2. Magistrate Judge Mazzone issued a report and recommendation (ECF No. 6) recommending that the petitioner's petition be denied and dismissed with prejudice. ECF No. 6 at 5.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to findings where no objections were made, such findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

Because the petitioner did not file any objections to the report and recommendation, the magistrate judge's findings and

recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A).

III. Discussion

In his report and recommendation, the magistrate judge first correctly determined that the petitioner made no demonstration that the remedy available under District of Columbia Code § 23-110 is an inadequate or ineffective means of challenging his sentence. Id. Specifically, the magistrate judge properly indicated that the petitioner's lack of success on two prior collateral attacks on his conviction does not render his local remedy inadequate or ineffective. Id. For those reasons, the magistrate judge properly concluded that the petitioner's petition should be denied and dismissed with prejudice because it does not demonstrate that a motion under § 23-113 is, or was, inadequate or ineffective to test the legality of the petitioner's conviction and detention and, therefore, this Court lacks jurisdiction. Id. at 5-6.

Upon review, this Court finds no clear error in the determinations of the magistrate judge and thus upholds his recommendation as framed. Rather than dismissing this civil action with prejudice, this civil action is dismissed without prejudice, subject to the petitioner filing a habeas petition in a court with proper jurisdiction.

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 6) is AFFIRMED and ADOPTED AS FRAMED. The petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241 (ECF No. 1) is DENIED and DISMISSED WITHOUT PREJUDICE.

This Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

It is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se petitioner by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: September 18, 2019

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE